

AMENDED IN SENATE APRIL 6, 2017

SENATE BILL

No. 687

Introduced by Senator Skinner

February 17, 2017

An act to amend Sections 5914 and 5920 of, and to add Chapter 9.2 (commencing with Section 5940) to Part 2 of Division 2 of the Corporations Code, and to amend ~~Section 1255.1~~ *Sections 1254 and 1255.1* of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 687, as amended, Skinner. Health facilities: emergency centers: Attorney General.

Existing law requires any nonprofit *public benefit* corporation that operates or controls a health facility or operates or controls a facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to ~~selling~~ *agreeing to sell* or otherwise ~~disposing~~ *dispose* of a material amount of its assets to a for-profit corporation or entity, a mutual benefit corporation or entity, or another nonprofit corporation or entity. Existing law authorizes the Attorney General to consider, before consenting to an agreement to sell or dispose of assets to these corporations or entities, whether the terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit *public benefit* corporation, and whether the agreement or transaction is at a fair market value, as specified.

This bill, *on and after January 1, 2015*, would apply the above notice and consent requirements to ~~when the~~ *a* nonprofit *public benefit* corporation ~~plans to~~ *prior to agreeing to sell, transfer, lease, exchange, option, convey, or otherwise dispose of the assets resulting from the reduction or elimination of emergency medical services provided at a*

licensed emergency center ~~within one year~~ after the Attorney General gives a specified consent or conditional consent.

This bill, except as specified, also would require any nonprofit *public benefit* corporation that operates or controls a health facility or operates or controls a facility that provides similar health care and that provides emergency services at a licensed emergency center to provide written notice to, and obtain written consent of, the Attorney General prior to a reduction of the level of emergency medical services provided or their elimination. This bill would require the written notice to contain the information that the Attorney General determines is required to make a decision in the public interest. The bill would require the Attorney General to notify the public benefit corporation of the decision to provide consent or conditional consent or withhold consent to the reduction in or elimination of emergency medical services within specified periods of time. ~~This~~ The bill, among other things, would require the Attorney General to conduct one or more public hearings after providing public notice, as specified, before issuing the written notice.

Existing law requires emergency services and care to be provided to any person requesting the services or care, or for whom services or care is requested, for any condition in which the person is in danger of loss of life, or serious injury or illness, at any *licensed* health facility ~~licensed under this chapter~~ that maintains and operates an emergency department to provide emergency services to the public when the health facility has appropriate facilities and qualified personnel available to provide the services or care. Existing law authorizes the Attorney General to bring a civil action against the responsible hospital or administrative or medical personnel to enjoin the violation of various provisions of existing law regarding the provision of emergency services at a licensed health facility.

Existing law *requires the State Department of Public Health, except as provided, to inspect and license health facilities, as specified.* Existing law requires a hospital that provides emergency medical services to, as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services, provide notice of the intended change to the State Department of Public Health, among other entities. Violation of these requirements is a crime.

This bill would *prohibit the State Department of Public Health from licensing a stand-alone emergency room or freestanding emergency center that is not part of a general acute care hospital facility providing*

24-hour inpatient care with basic services. The bill would require the above-described notice to also be given to the ~~Attorney General~~ agency in charge of the provision of health services. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5914 of the Corporations Code is
2 amended to read:

3 5914. (a) (1) Any nonprofit corporation that is defined in
4 Section 5046 and operates or controls a health facility, as defined
5 in Section 1250 of the Health and Safety Code, or operates or
6 controls a facility that provides similar health care, shall be required
7 to provide written notice to, and to obtain the written consent of,
8 the Attorney General prior to entering into any agreement or
9 transaction to do any of the following:

10 (A) Sell, transfer, lease, exchange, option, convey, or otherwise
11 dispose of, its assets to a for-profit corporation or entity or to a
12 mutual benefit corporation or entity when a material amount of
13 the assets of the nonprofit corporation are involved in the
14 agreement or transaction.

15 (B) Transfer control, responsibility, or governance of a material
16 amount of the assets or operations of the nonprofit corporation to
17 any for-profit corporation or entity or to any mutual benefit
18 corporation or entity.

19 (C) Sell, transfer, lease, exchange, option, convey, or otherwise
20 dispose of *the assets resulting from the reduction or elimination*
21 *of emergency medical services provided at an emergency center*
22 licensed pursuant to Sections 1255 and 1277 of the Health and
23 Safety Code to a for-profit corporation or entity or to a mutual
24 benefit corporation or entity ~~within one year~~ after the Attorney
25 General gives, pursuant to Section 5940, consent or conditional

1 consent to the reduction or elimination of emergency medical
2 ~~services provided at the emergency center.~~ *services.*

3 (2) The substitution of a new corporate member or members
4 that transfers the control of, responsibility for, or governance of
5 the nonprofit corporation shall be deemed a transfer for purposes
6 of this article. The substitution of one or more members of the
7 governing body, or any arrangement, written or oral, that would
8 transfer voting control of the members of the governing body, shall
9 also be deemed a transfer for purposes of this article.

10 (b) The notice to the Attorney General provided for in this
11 section shall include and contain the information the Attorney
12 General determines is required. The notice, including any other
13 information provided to the Attorney General under this article,
14 and that is in the public file, shall be made available by the
15 Attorney General to the public in written form, as soon as is
16 practicable after it is received by the Attorney General.

17 (c) This section shall not apply to a nonprofit corporation if the
18 agreement or transaction is in the usual and regular course of its
19 activities or if the Attorney General has given the corporation a
20 written waiver of this section as to the proposed agreement or
21 transaction.

22 (d) This section shall apply to any foreign nonprofit corporation
23 that operates or controls a health facility, as defined in Section
24 1250 of the Health and Safety Code, or a facility that provides
25 similar health care.

26 *(e) The changes made to this section by the act adding this*
27 *subdivision shall apply on and after January 1, 2015.*

28 SEC. 2. Section 5920 of the Corporations Code is amended to
29 read:

30 5920. (a) (1) Any nonprofit corporation that is defined in
31 Section 5046 and operates or controls a health care facility, as
32 defined in Section 1250 of the Health and Safety Code, or operates
33 or controls a facility that provides similar health care, shall be
34 required to provide written notice to, and to obtain the written
35 consent of, the Attorney General prior to entering into any
36 agreement or transaction to do any of the following:

37 (A) Sell, transfer, lease, exchange, option, convey, or otherwise
38 dispose of, its assets to another nonprofit corporation or entity
39 when a material amount of the assets of the nonprofit corporation
40 are involved in the agreement or transaction.

1 (B) Transfer control, responsibility, or governance of a material
2 amount of the assets or operations of the nonprofit corporation to
3 another nonprofit corporation or entity.

4 (C) Sell, transfer, lease, exchange, option, convey, or otherwise
5 dispose of *the assets resulting from the reduction or elimination*
6 *of emergency medical services provided at* an emergency center
7 licensed pursuant to Sections 1255 and 1277 of the Health and
8 Safety Code to another nonprofit corporation or entity ~~within one~~
9 ~~year~~ after the Attorney General gives, pursuant to Section 5940,
10 consent or conditional consent to the reduction or elimination of
11 emergency medical ~~services provided at the emergency center.~~
12 ~~services.~~

13 (2) The substitution of a new corporate member or members
14 that transfers the control of, responsibility for, or governance of
15 the nonprofit corporation, the substitution of one or more members
16 of the governing body that would transfer voting control of the
17 members of the governing body, or any arrangement, written or
18 oral, that would transfer voting control of the entity shall be deemed
19 a transfer for purposes of this article.

20 (b) The notice to the Attorney General provided for in this
21 section shall contain the information the Attorney General
22 determines is required. The notice, including any other information
23 provided to the Attorney General under this article, and that is the
24 public file, shall be made available by the Attorney General to the
25 public in written form, as soon as is practicable after it is received
26 by the Attorney General.

27 (c) This section shall not apply to a nonprofit corporation if the
28 agreement or transaction is in the usual and regular course of its
29 activities or if the Attorney General has given the corporation a
30 written waiver of this section as to the proposed agreement or
31 transaction.

32 (d) This section shall apply to any foreign nonprofit corporation
33 that operates or controls a health facility, as defined in Section
34 1250 of the Health and Safety Code, or a facility that provides
35 similar health care.

36 (e) This section shall not apply to an agreement or transaction
37 if the other party to the agreement or transaction is an affiliate, as
38 defined in Section 5031, of the transferring nonprofit corporation
39 or entity, and the corporation or entity has given the Attorney
40 General 20 days advance notice of the agreement or transaction.

1 (f) *The changes made to this section by the act adding this*
2 *subdivision shall apply on and after January 1, 2015.*

3 SEC. 3. Chapter 9.2 (commencing with Section 5940) is added
4 to Part 2 of Division 2 of the Corporations Code, to read:

5
6 CHAPTER 9.2. EMERGENCY CENTER SERVICES
7

8 5940. (a) Except as provided in subdivision (b), a nonprofit
9 corporation that operates or controls a health facility, as defined
10 in Section 1250 of the Health and Safety Code, or operates or
11 controls a facility that provides similar health care, and that
12 provides emergency medical services at an emergency center
13 licensed under Sections 1255 and 1277 of the Health and Safety
14 Code, shall provide written notice to, and to obtain the written
15 consent of, the Attorney General ~~as soon as possible, but not later~~
16 ~~than 90 days~~ prior to a planned reduction in the level of emergency
17 medical services provided or elimination of those services.

18 (b) (1) This section shall not apply to a nonprofit corporation
19 if the Attorney General has given the corporation a written waiver
20 of this section as to the planned elimination or reduction of the
21 level of emergency medical services.

22 (2) A health facility shall not be subject to this section if,
23 pursuant to subdivision (c) of Section 1255.1 of the Health and
24 Safety Code, the State Department of Public Health determines
25 that the use of resources to keep the emergency center open
26 substantially threatens the stability of the hospital as a whole, or
27 cites the emergency center for unsafe staffing practices.

28 (c) The notice to the Attorney General described in subdivision
29 (a) shall include and contain the information the Attorney General
30 determines is required to make a decision in the public interest
31 pursuant to this section. The notice, including any other information
32 provided to the Attorney General under this section, and that is in
33 the public file, shall be made available by the Attorney General to
34 the public in written form, as soon as is practicable after it is
35 received by the Attorney General.

36 (d) Within 90 days of the receipt of the written notice described
37 in subdivision (a), the Attorney General shall notify the nonprofit
38 corporation in writing of the decision to consent to, give conditional
39 consent to, or not consent to the reduction or elimination in
40 emergency medical services. The Attorney General may extend

1 this period for one additional 45-day period if either of the
2 following conditions is satisfied:

3 (1) The extension is necessary to obtain information to make a
4 determination pursuant to paragraph (1) of subdivision (f).

5 (2) The plan to reduce or eliminate emergency medical services
6 is substantially modified after the first public meeting conducted
7 by the Attorney General in accordance with subdivision (e).

8 (e) Prior to issuing any written decision referred to in subdivision
9 (a), the Attorney General shall conduct one or more public
10 meetings, one of which shall be in the county in which the facility
11 is located, to hear comments from interested parties. At least 14
12 days before conducting the public meeting, the Attorney General
13 shall provide written notice of the time and place of the meeting
14 through publication in one or more newspapers of general
15 circulation in the affected community and to the board of
16 supervisors of the county in which the facility is located. If a
17 substantive change in the plan to eliminate or reduce emergency
18 medical services is submitted to the Attorney General after the
19 initial public meeting, the Attorney General may conduct an
20 additional public meeting to hear comments from interested parties
21 with respect to that change.

22 (f) The Attorney General shall have discretion to consent to,
23 give conditional consent to, or not consent to any elimination or
24 reduction of emergency medical services described in subdivision
25 (a). In making the determination, the Attorney General shall
26 consider any factors that the Attorney General deems relevant,
27 including, but not limited to, whether any of the following apply:

28 (1) The planned elimination or reduction in the level of
29 emergency medical services is consistent with the charitable trust
30 on which the assets are held by the health facility or by the
31 affiliated nonprofit health system.

32 (2) The planned elimination or reduction involves or constitutes
33 any breach of trust.

34 (3) The Attorney General has been provided, pursuant to Section
35 5250, with sufficient information and data by the nonprofit
36 corporation to evaluate adequately the reduction or elimination of
37 emergency medical services, or the effects thereof on the public.

38 (4) The reduction or elimination of emergency medical services
39 may create a significant effect on the availability or accessibility
40 of health care services to the affected community.

1 (5) The proposed reduction or elimination of emergency medical
2 services is in the public interest.

3 (g) If the Attorney General gives consent or conditional consent
4 to the reduction or elimination of emergency medical services
5 pursuant to this section, and the assets resulting from the reduction
6 or elimination are ~~to be~~ sold, transferred, leased, exchanged,
7 optioned, conveyed, or otherwise disposed of ~~within one year of~~
8 ~~the date the Attorney General gives consent~~, of the disposal of
9 those assets shall be subject to Sections 5914 or 5920.

10 (h) (1) Within the time periods designated in subdivision (d)
11 and relating to those factors specified in subdivision (f), the
12 Attorney General may do the following:

13 (A) Contract with, consult, and receive advice from any state
14 agency on those terms and conditions that the Attorney General
15 deems appropriate.

16 (B) In his or her sole discretion, contract with experts or
17 consultants to assist in reviewing the proposed changes to the level
18 of emergency services provided.

19 (2) Contract costs shall not exceed an amount that is reasonable
20 and necessary to conduct the review and evaluation. Any contract
21 entered into under this section shall be on a noncompetitive bid
22 basis and shall be exempt from Chapter 2 (commencing with
23 Section 10290) of Part 2 of Division 2 of the Public Contract Code.
24 The nonprofit corporation, upon request, shall pay the Attorney
25 General promptly for all contract costs.

26 (3) The Attorney General shall be entitled to reimbursement
27 from the nonprofit corporation for all actual, reasonable, direct
28 costs incurred in reviewing, evaluating, and making the
29 determination referred to in this chapter, including administrative
30 costs. The nonprofit corporation shall promptly pay the Attorney
31 General, upon request, for all of those costs.

32 (4) In order to monitor effectively ongoing compliance with
33 any terms and conditions that the Attorney General may impose
34 pursuant to this section, including, but not limited to, the ongoing
35 use of the charitable assets in a manner consistent with the trust
36 pursuant to which they are held, the Attorney General may, in his
37 or her sole discretion, contract with experts and consultants to
38 assist in this regard. Contract costs shall not exceed an amount
39 that is reasonable and necessary to conduct the review and
40 evaluation. Any contract entered into under this section shall be

on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The nonprofit corporation shall pay the Attorney General promptly for all contract costs. The Attorney General shall be entitled to reimbursement from the corporation for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the reduction or elimination of emergency medical services, including contract and administrative costs. The nonprofit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

(i) The Attorney General may adopt regulations implementing this section.

(j) *This section shall not be construed to allow the Attorney General to authorize emergency medical services to be provided by a facility that does not meet the requirements of Section 1798.175 of the Health and Safety Code or to authorize a nonprofit general acute care hospital to reduce operations to provide emergency medical services without providing 24-hour inpatient care with basic services, including, but not limited to, medical, nursing, surgical, anaesthesia, laboratory, radiology, pharmacy, and dietary services. This section shall not be construed to authorize, allow for, or permit operation of a stand-alone emergency room or freestanding emergency center, except as provided in subdivision (b) of Section 1798.101 of the Health and Safety Code.*

~~(j)~~

(k) For purposes of this section, “nonprofit corporation” means a corporation that is defined in Section 5046 or a foreign corporation that is defined in Section 5053.

SEC. 4. *Section 1254 of the Health and Safety Code is amended to read:*

1254. (a) Except as provided in subdivision (e), the state department shall inspect and license health facilities. The state department shall license health facilities to provide their respective basic services specified in Section 1250. Except as provided in Section 1253, the state department shall inspect and approve a general acute care hospital to provide special services as specified in Section 1255. *The state department shall not license a stand-alone emergency room or freestanding emergency center that is not part of a general acute care hospital facility providing*

1 24-hour inpatient care with basic services, including, but not
2 limited to, medical, nursing, surgical, anesthesia, laboratory,
3 radiology, pharmacy, and dietary services. The state department
4 shall develop and adopt regulations to implement the provisions
5 contained in this section.

6 (b) Upon approval, the state department shall issue a separate
7 license for the provision of the basic services enumerated in
8 subdivision (c) or (d) of Section 1250 whenever these basic services
9 are to be provided by an acute care hospital, as defined in
10 subdivision (a), (b), or (f) of that section, where the services
11 enumerated in subdivision (c) or (d) of Section 1250 are to be
12 provided in any separate freestanding facility, whether or not the
13 location of the separate freestanding facility is contiguous to the
14 acute care hospital. The same requirement shall apply to any new
15 freestanding facility constructed for the purpose of providing basic
16 services, as defined in subdivision (c) or (d) of Section 1250, by
17 any acute care hospital on or after January 1, 1984.

18 (c) (1) Those beds licensed to an acute care hospital which,
19 prior to January 1, 1984, were separate freestanding beds and were
20 not part of the physical structure licensed to provide acute care,
21 and which beds were licensed to provide those services enumerated
22 in subdivision (c) or (d) of Section 1250, are exempt from the
23 requirements of subdivision (b).

24 (2) All beds licensed to an acute care hospital and located within
25 the physical structure in which acute care is provided are exempt
26 from the requirements of subdivision (b) irrespective of the date
27 of original licensure of the beds, or the licensed category of the
28 beds.

29 (3) All beds licensed to an acute care hospital owned and
30 operated by the State of California or any other public agency are
31 exempt from the requirements of subdivision (b).

32 (4) All beds licensed to an acute care hospital in a rural area as
33 defined by Chapter 1010, of the Statutes of 1982, are exempt from
34 the requirements of subdivision (b), except where there is a
35 freestanding skilled nursing facility or intermediate care facility
36 which has experienced an occupancy rate of 95 percent or less
37 during the past 12 months within a 25-mile radius or which may
38 be reached within 30 minutes using a motor vehicle.

39 (5) All beds licensed to an acute care hospital which meet the
40 criteria for designation within peer group six or eight, as defined

1 in the report entitled Hospital Peer Grouping for Efficiency
2 Comparison, dated December 20, 1982, and published by the
3 California Health Facilities Commission, and all beds in hospitals
4 which have fewer than 76 licensed acute care beds and which are
5 located in a census designation place of 15,000 or less population,
6 are exempt from the requirements of subdivision (b), except where
7 there is a freestanding skilled nursing facility or intermediate care
8 facility which has experienced an occupancy rate of 95 percent or
9 less during the past 12 months within a 25-mile radius or which
10 may be reached within 30 minutes using a motor vehicle.

11 (6) All beds licensed to an acute care hospital which has had a
12 certificate of need approved by a health systems agency on or
13 before July 1, 1983, are exempt from the requirements of
14 subdivision (b).

15 (7) All beds licensed to an acute care hospital are exempt from
16 the requirements of subdivision (b), if reimbursement from the
17 Medi-Cal program for beds licensed for the provision of services
18 enumerated in subdivision (c) or (d) of Section 1250 and not
19 otherwise exempt does not exceed the reimbursement which would
20 be received if the beds were in a separately licensed facility.

21 (d) Except as provided in Section 1253, the state department
22 shall inspect and approve a general acute care hospital to provide
23 special services as specified in Section 1255. The state department
24 shall develop and adopt regulations to implement subdivisions (a)
25 to (d), inclusive, of this section.

26 (e) The State Department of Health Care Services shall inspect
27 and license psychiatric health facilities. The State Department of
28 Health Care Services shall license psychiatric health facilities to
29 provide their basic services specified in Section 1250.2. The State
30 Department of Health Care Services shall develop, adopt, or amend
31 regulations to implement this subdivision.

32 ~~SEC. 4.~~

33 *SEC. 5.* Section 1255.1 of the Health and Safety Code is
34 amended to read:

35 1255.1. (a) Any hospital that provides emergency medical
36 services under Section 1255 shall, as soon as possible, but not later
37 than 90 days prior to a planned reduction or elimination of the
38 level of emergency medical services, provide notice of the intended
39 change to the state department, ~~the Attorney General~~, the local
40 government ~~entity~~ *entity, and the agency* in charge of the provision

1 of health services, and all health care service plans or other entities
2 under contract with the hospital to provide services to enrollees
3 of the plan or other entity.

4 (b) In addition to the notice required by subdivision (a), the
5 hospital shall, within the time limits specified in subdivision (a),
6 provide public notice of the intended change in a manner that is
7 likely to reach a significant number of residents of the community
8 serviced by that facility.

9 (c) A hospital shall not be subject to this section or Section
10 1255.2 if the state department does either of the following:

11 (1) Determines that the use of resources to keep the emergency
12 center open substantially threatens the stability of the hospital as
13 a whole.

14 (2) Cites the emergency center for unsafe staffing practices.

15 ~~SEC. 5.~~

16 *SEC. 6.* No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.